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From: Dale Harber <dharber@fs.fed.us>
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Date: 1/26/2007 9:43:36 AM
Subject: Fw: Bear Canyon Stipulations

Wayne, Joe, and Karl:

Here are the stipulations that Bruce Ellis and SHPO have worked out for Bear Canyon

Dale

----- Forwarded by Dale Harber/R4/USDAFS on 01/26/2007 09:31 AM -----

William
Ellis/R4/USDAFS

To
01/26/2007 09:09 AM Dale Harber/R4/USDAFS@FSNOTES
cc

Subject
Bear Canyon Stipulations

As we discussed...attached is the document with your suggested edits.

(See attached file: Bear Canyon Language.doc)

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Stipulations

1. **Monitoring of Subsidence.** CO-OP will conduct annual subsidence monitoring of National Forest System Lands (NFS) throughout the life of the mine. Should subsidence occur, CO-OP will provide an accurate map of the entire subsidence area. CO-OP will ensure that a qualified archaeologist will then examine the location of the subsidence area relative to previous inventories and known sites within seven (7) days of the identification of the subsidence. Depending on the location of subsidence in relation to previous inventories and known sites, the following stipulations will apply (to each subsidence event):
 - a. **Previously Inventoried and No Sites.** If subsidence occurs on NFS lands within an area that has undergone previous archaeological inventory, and no sites are present within the area of subsidence, or no sites eligible to the National Register of Historic Places are present in the area of subsidence, no further work will need to be done. CO-OP or their consulting archaeologist will notify the U.S. Forest Service (USFS) regarding this determination within seven (7) days of making the determination. The USFS will provide the information to SHPO.
 - b. **Previously Inventoried and Known Sites.** If subsidence occurs on NFS lands within an area that has undergone previous archaeological inventory, and known archaeological sites, previously determined eligible to the National Register of Historic Places are present in the subsidence area, CO-OP will have a qualified archaeologist examine the effects of subsidence upon the site(s) in question within fourteen (14) days of making this determination. The archaeologist will provide a report, for review by the USFS in a timely manner that makes recommendations regarding whether or not the effects of subsidence are adverse. The USFS will make a final determination of the effects of subsidence. The USFS will then consult with the SHPO regarding the effects determination. If the effect is determined to be adverse, procedures following 36CFR800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.
 - c. **Not Previously Inventoried.** If subsidence occurs on NFS lands within an area that has not undergone previous archaeological inventory, CO-OP will have a -qualified archaeologist conduct a field examination of the subsidence area within fourteen (14) days of making this determination. Depending on the presence or absence of sites in the subsidence area, the following stipulations will apply (to each subsidence event):
 - i. **No Sites.** If no sites are present within the area of subsidence, the archaeologist will make a recommendation of No Historic

Properties Affected to the USFS in a timely manner. The USFS will make a final determination of the effects of subsidence. The USFS will then consult with the SHPO regarding the effects determination per 36CFR800.4(c).

ii. **Inventoried Sites.** If a site or sites are present within the area of subsidence, the archaeologist will provide a report and make recommendations of eligibility and effect to the USFS (per 36CFR800.4(c)(2) and 36CFR800.5) regarding the site(s) and subsidence effects on the site(s) in a timely manner. The USFS will make a final determination of eligibility of the site(s) and the effects of subsidence on the site(s). The USFS will then consult with the SHPO regarding the effects determination. If the effect to any site eligible to the National Register of Historic Places is determined to be adverse, procedures following 36CFR800.6 and the stipulations below regarding evaluation and archaeological treatment will be followed.

d. **Time Lines.** In all cases SHPO and the Tribes will be afforded thirty (30) calendar days following receipt of reports/consultation requests to respond.

e. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.

2. **Discoveries in Area of Potential Effect (APE).** Should unanticipated cultural or historic resources be observed within the APE during, but not limited to, CO-OP's quarterly ground-water monitoring, annual subsidence monitoring, OGM's field visits, construction of any mine-related structures or features, future archeological surveys conducted within the permit area, or otherwise brought to USFS attention, CO-OP will halt any work within the vicinity of the discovery that could harm the discovery and notify the USFS within 24 hours of the discovery. CO-OP will also protect the site. The USFS will notify SHPO of said resources within seven (7) days of resource discovery. If determined appropriate, the USFS will require CO-OP to record the discovery, conduct additional evaluations as necessary, and provide correlating reports. The USFS will make determinations of eligibility and effect regarding the discovery.

a. **No Historic Properties Affected or No Adverse Effects.** If a determination of No Historic Properties Affected or No Adverse Effects is made, the USFS will consult with the SHPO regarding the determination following 36CFR800.4-5.

- b. **Adverse Or Potentially Adverse.** If effects to a site that is determined via this process to be eligible to the National Register of Historic Places are determined adverse or potentially adverse, the USFS, CO-OP and SHPO will reconvene to recommend and draft appropriate measures to avoid, minimize, or mitigate adverse effects.
 - c. **Time Lines.** In all cases SHPO and the Tribes will be afforded thirty (30) calendar days following receipt of reports/consultation requests to respond.
 - d. **Conducting Consultation.** Consultation with tribes and consulting parties will occur during this process at a level appropriate to the nature of the resources (if any) and effects to the resources (if any) taking into account comments and concerns received previously from the tribes and consulting parties.
3. **Funding of Work.** CO-OP will fund and implement any future and all cultural or historic resources fieldwork, analysis, and monitoring, required under this Agreement.